

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

WINES, VINES, AND CORKS, LLC,)	Case No. _____
)	
Plaintiff,)	
)	NOTICE OF REMOVAL
v.)	
)	
FIRST NATIONAL OF NEBRASKA, INC.;)	
FIRST NATIONAL BANK OF OMAHA;)	
FIRST NATIONAL MERCHANT SOLUTIONS,)	
LLC; and FRONTSTREAM PAYMENTS, INC.)	
)	
Defendants.)	

COME NOW Defendants First National of Nebraska, Inc., First National Bank of Omaha, and First National Merchant Solutions, LLC (n/k/a TSYS Merchant Solutions, LLC), pursuant to 28 U.S.C. §§ 1441, 1446 & 1453, and hereby remove this action from the District Court of Douglas County, Nebraska to the United States District Court for the District of Nebraska. Removal is proper on the following grounds:

1. Defendants First National of Nebraska, Inc., First National Bank of Omaha, and First National Merchant Solutions, LLC (n/k/a TSYS Merchant Solutions, LLC) join in this removal petition, as evidenced by the electronic signature of each Defendant's counsel in the signature block below. Additionally, counsel for Defendants First National of Nebraska, Inc. and First National Bank of Omaha has spoken with counsel for Defendant FrontStream Payments, Inc., and Defendant FrontStream Payments, Inc. consents to this removal petition.

2. On January 31, 2014, Plaintiff Wines, Vines, and Corks, LLC, a Kentucky limited liability company, commenced this action on behalf of itself and all others similarly situated, in the District Court of Douglas County, Nebraska. Said action is still pending.

3. Pursuant to 28 U.S.C. § 1332(d), this Court has original diversity jurisdiction over this matter. Under §1332(d), this Court has original diversity jurisdiction over any class action in which (1) the amount in controversy exceeds \$5,000,000.00, exclusive of interests and costs; (2) any member of the plaintiff class is a citizen of a different state than any defendant; and (3) the prospective class includes more than 100 members. 28 U.S.C. § 1332(d)(2) & (d)(5). Each of those requirements is satisfied here.

(a) The amount in controversy requirement is satisfied. Plaintiff alleges that Plaintiff holds a credit card processing account with Defendants. (Exhibit A, Complaint, p. 2, ¶8). Plaintiff alleges that a data security breach occurred in February, 2013, or March, 2013, and, as a result, Defendants wrongfully charged and refused to reimburse Plaintiff for processing fees related to unauthorized credit card transactions allegedly processed on Plaintiff's account. (Id. at p. 3, ¶¶11-18). Plaintiff alleges that the prospective class of individuals affected by the alleged data security breach, whom Defendants also allegedly charged and failed to reimburse for unauthorized processing fees, includes "hundreds if not thousands of geographically dispersed people and entities." (Id. at p. 4, ¶21). Plaintiff does not specifically allege the amount of unauthorized processing fees at issue. However, the records of Defendant First National Merchant Solutions, LLC (n/k/a TSYS Merchant Solutions, LLC) reflect that between February, 2013 and May, 2013, the processing fees charged to Plaintiff totaled \$16,660.84, including \$11,661.60 in authorization processing fees. (Exhibit B, Affidavit of Geanie Bless-Mixan for TSYS Merchant Solutions, LLC, ¶5). If there are even one thousand people in the class, the amount in controversy is in excess of \$11,000,000.00. ($\$11,661.60 \times 1,000 = \$11,661,600.00$). See, e.g., LRI Holding Co., LLC v. Bower, No. 09-cv-7, 2009 WL 974783, *2 (D. Neb. Apr. 9, 2009) (noting that "the court, in its discretion, may consider materials outside the pleadings such

as depositions or affidavits in determining” whether the jurisdictional requirements for removal are satisfied).

(b) The diversity requirement is satisfied because the Plaintiff is diverse from at least one Defendant. Plaintiff is a Kentucky limited liability company. Defendant First National Merchant Solutions, LLC (n/k/a TSYS Merchant Solutions, LLC) is a Delaware limited liability company and a citizen of Delaware.

(c) The prospective class includes more than 100 people. Plaintiff alleges that the prospective class includes "hundreds if not thousands of geographically dispersed people and entities." (Complaint, p. 4, ¶21).

4. Venue is proper in this judicial district because, among other things, a substantial part of the events or omissions giving rise to the claim occurred in this District and Defendants First National of Nebraska, Inc. and First National Bank of Omaha reside in this District. See 28 U.S.C. § 1391(a) & (b).

5. Removal is proper under 28 U.S.C. § 1446 because this notice has been filed within thirty (30) days after receipt of the initial pleadings by Defendants. A copy of the summonses and Complaint served upon Defendants First National of Nebraska, Inc., First National Bank of Omaha, and First National Merchant Solutions, LLC (n/k/a TSYS Merchant Solutions, LLC) are attached hereto, collectively, as Exhibit A.

6. Removal is proper under 28 U.S.C. § 1453(b) because any class action may be removed by any defendant, without regard to whether any defendant is a citizen of the state in which the action is brought.

7. A notice of the filing of this Notice of Removal is being filed contemporaneously herewith in the District Court of Douglas County, Nebraska.

8. There are no matters pending in the District Court of Douglas County, Nebraska that will currently require resolution by this Court.

FIRST NATIONAL OF NEBRASKA, INC. and
FIRST NATIONAL BANK OF OMAHA,
Defendants,

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CERTIFICATE OF SERVICE

Comes now the undersigned and hereby certifies that a true and correct copy of the above and foregoing was served, via electronic mail and first-class U.S. Mail, postage prepaid, on this 12th day of March, 2014, upon the following:

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